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United States House of Representatives

Energy and Commerce Committee

Subcommittee on Commerce, Manufacturing and Trade hearing:

Protecting Children's Privacy in an Electronic World

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Summary of Prepared Statement of Alan Simpson, Common Sense Media

- This hearing is critical, because concerns about children's online privacy are growing.
- Common Sense Media believes that parents, educators, companies, and policymakers all must play a central role in helping to protect children's privacy in an electronic world. We work with each of these groups to improve the media lives of children.
- The Federal Trade Commission's proposed rule revisions will help keep COPPA up to date with a rapidly changing electronic world. They will improve protections for children's online privacy, encourage parental involvement, and foster innovation in online services for children. They will help hold industry more accountable. The revisions also build on the fundamental purpose of COPPA – bolstering the role of parents as informed gatekeepers in the lives of their young children.
- It is especially valuable that the FTC has clarified that COPPA covers mobile platforms, and has struck a reasonable balance between maintaining the internal operations of online services and protecting children from intensive tracking and behavioral advertising.
- The FTC proposals will be an important step for younger kids, but teens still need protection, and legislation has been introduced that would provide a strong baseline.
- Media and technology companies must do far more to help families protect children's online privacy, because they are in the best position to develop better technology, tools and information for users. There have been a few positive steps by industry of late, but on the whole, media and technology companies have not done nearly enough to provide better solutions for families. In general, they only respond to government pressure.

Good morning, Madam Chairwoman and members of the Subcommittee, and thank you for this opportunity to discuss continuing updates for the protection of children's privacy. Today we address the Federal Trade Commission's proposed rule revisions for the Children's Online Privacy Protection Act (COPPA) and the need for further policy action to empower parents and protect children's privacy.

Common Sense Media is a non-profit, non-partisan organization dedicated to helping children and families thrive in a world of media and technology. We do this by providing trustworthy information, education, and an independent voice, and by working with everyone involved in the growing role of media in the lives of kids – parents and families, educators, media and technology companies, and policymakers.

Families and children are obviously the first and most important audience, and the major focus of our work. More than one and a half million people visit the Common Sense website each month for reviews about media content (including movies, video games, mobile applications or “apps,” web sites, and books) and parent tips about the digital media world.

In addition, we have built an extensive and free Digital Literacy and Citizenship curriculum and parent education program for schools and educators.¹ These research-based tools provide lesson plans, classroom and homework activities, and interactive components that help teachers and parents guide students from K-12 to make smart, safe and responsible decisions in the digital world where they live, study and play. We launched the curriculum two years ago, and there are now more than 18,500 schools using the resources, in all 50 states.²

Media and technology companies are also an essential part of the equation, and our distribution partnerships with leading companies like Comcast, DIRECTV, Time Warner

¹ <http://www.commonsensemedia.org/educators>

² For example: CA – 1874 schools; NC – 517; TN – 281; FL – 696; AR – 130; IL – 759; KS – 230; KY – 233; LA – 182; MI – 503; MS – 96; NY – 1106; NH – 150; NJ – 505; TX – 1137; WV – 66; UT – 94

Cable, Cox Communications, Yahoo!, Google, AOL, Apple, Disney, Netflix, and Fandango enable tens of millions of parents to access our advice and information.

In addition, policymakers play a key role in helping families and kids thrive in a world of media and technology, and the current discussions about children's online privacy are a great example. Common Sense Media commends the Chair and the Subcommittee for this timely hearing on children's privacy. The FTC's proposed revisions will help keep COPPA up to date with a rapidly changing and increasingly mobile electronic world. They will significantly improve protections for children's online privacy, encourage parental involvement, and foster innovation in online services for children. Most importantly, the revisions build on the fundamental purpose of COPPA – maintaining the role of parents as gatekeepers in the lives of their children. As Senator Bryan stated when introducing the Senate version of COPPA:

Senator McCain and I believe there must be safeguards against the online collecting of information from children without a parent's knowledge or consent. If a child answers a phone and starts answering questions, a parent automatically becomes suspicious and asks who they are talking to. When a child is on the Internet, parents often have no knowledge of [with] whom their child is interacting.³

While the FTC revisions will keep COPPA's protections for children under 13 up to date, there are still important online privacy concerns for adolescents aged 13 and older. We look forward to further action from the Commission on protections for adolescents in their Privacy Framework, and we look forward to further Congressional action in this area. There are several sensible proposals for strengthening protections for privacy and personal information online. Because of our focus on children and families, Common Sense Media is

³ 144 Cong. Rec. S8483 (July 17, 1998) (Statement of Sen. Bryan).

especially supportive of H.R. 1895, the “Do Not Track Kids Act of 2011” proposed by Rep. Edward Markey (D-Mass.) and Rep. Joe Barton (R-Texas).

I. The Time Is Critical

Revisions to the COPPA rule are clearly needed now, because the electronic world has changed dramatically since the law was written in 1998 – and the changes are even more significant for kids. Children and teens today are growing up in an electronic environment that provides an ever-present and ever-changing experience – an environment that is changing childhood itself. And kids don’t just access content online, they create it. They don’t simply interact online with their peers, but with adults and companies too. In contrast to the childhoods many of us had, today’s children are growing up in public. They post, search, copy, friend, tweet, check in, create, distribute, and connect through social networks, apps, and other services in ways that can be seen by millions, and tracked by companies, around the world.

Concern about online privacy is clearly growing. In a Common Sense Media/Zogby International poll last fall, 85% of parents said they are more concerned about online privacy than they were five years ago. 61% of parents said Congress should update laws related to online privacy and security for children and teens.⁴

Those survey findings are reinforced by growing demand for Common Sense parent tips and educator resources. In the past year we have published more than two dozen parent advice articles, curriculum lessons, and videos related to online privacy and security. These pages have been viewed more than 100,000 times on our site, and the curriculum documents have been downloaded by more than 3,000 teachers.

⁴ Common Sense Media, *Protecting Our Kids’ Privacy in a Digital World*, 1 (Dec. 2010). http://cdn2-www.ec.commonssensemedia.org/sites/default/files/privacy_whitepaper_dec2010.pdf.

Data from our media and technology company partners provide another illustration about parent concerns around online privacy and safety for children:

- Each month, more than 800,000 people visit the Yahoo! Safely site to access parent information – from Common Sense and other organizations – on issues like cyberbullying, privacy protection, and digital citizenship.
- Through partnerships with Comcast, Time Warner Cable, DIRECTV, Bright House, Cox, and others, Common Sense provides video-on-demand parent tips on issues such as cyberbullying, sexting, and online privacy. There were more than 1.5 million views of our video parent tips on these platforms in the first eight months of this year.
- Last month, 12,000 parents participated in an online event hosted by Common Sense Media and Nickelodeon's ParentsConnect, where we answered parent questions around cyberbullying and kids' online safety.

Concern about online privacy is also growing among policymakers – in Washington, DC and in the states. In addition to this important hearing, I've participated in or attended several Town Hall events in California in recent weeks where Congressional leaders addressed online privacy, safety, ID theft, and other issues. I'll participate in another next week in Los Angeles with California Senate Majority Leader Ellen Corbett.

II. The COPPA Proposal

The FTC's COPPA proposal represents a significant step in updating protections for children online.⁵ The FTC's thoughtful and reasoned approach reflects the reality of some present threats to children's privacy. Now more than ever, kids are using mobile devices with the capability to reveal their precise location. Further, the FTC's handling of IP addresses and other identifiers strikes a balance between maintaining the internal operations of online services and protecting children from intensive tracking and behavioral advertising.

a. Mobile & Location Updates

It is especially valuable that the FTC has clarified that COPPA covers online services on mobile platforms.⁶ The Commission's proposal to also include geolocation information under the definition of information protected by COPPA further updates the rule to reflect the current electronic and digital world. Online services and operators no longer collect just traditional street addresses, but also Global Positioning System data and other indicators of location that can be just as accurate, if not more so. Importantly, while users may actually enter their street address information into a service, geolocation information may be collected by a service with little or no user knowledge.

The ability to track the mobile whereabouts and habits of an individual as she or he moves throughout our society raises hyper-sensitive privacy concerns. Privacy is an issue everywhere in the electronic world, but mobile privacy is an issue on steroids.

For kids, this is absolutely critical – knowing what a child or teen does online at home is one thing. Knowing where they go after school, with whom they visit, and what they search for is not only incredibly invasive, it is potentially very dangerous and a fundamental violation of

⁵ Federal Trade Commission, Children's Online Privacy Protection Rule, 76 Fed. Reg. 59,804 (Sept. 27, 2011) [hereinafter COPPA NPRM].

⁶ *Id.* at 59,807.

their personal privacy and self-interest. Mobile companies and app developers that have a cavalier attitude about this topic need a very clear wake-up call. Common Sense believes all users should have “opt-in” protections for location information for all mobile services and apps, and it is especially important to protect children and teens.

Several recent surveys reinforce concerns about mobile technology and geolocation:

- In a survey by TRUSTe, 77% of smartphone users said that they don’t want to share their location with app owners and developers.⁷
- In a Nielsen survey of mobile subscribers who recently downloaded apps, 59% of women and 52% of men said they are concerned about their privacy when using geolocation services and check-in apps.⁸
- The Future of Privacy Forum analyzed the top 30 paid mobile apps across the leading operating systems (iOS, Android, & Blackberry) and found that 22 of them – nearly three-quarters – lacked even a basic privacy policy.⁹

It’s also important to note that mobile privacy isn’t a concern just for parents, but also for teens. The Common Sense/Zogby poll also found that 81% of teens say search engines and social networking sites should not share their physical location with other companies without their specific authorization.¹⁰

⁷ TRUSTe, *Survey Results Are In: Consumers Say Privacy is a Bigger Concern than Security on Smartphones*, (April 27, 2011), <http://www.truste.com/blog/2011/04/27/survey-results-are-in-consumers-say-privacy-is-a-bigger-concern-than-security-on-smartphones/>.

⁸ *Privacy Please! U.S. Smartphone App Users Concerned with Privacy When it Comes to Location*, NielsenWire (April 21, 2011), http://blog.nielsen.com/nielsenwire/online_mobile/privacy-please-u-s-smartphone-app-users-concerned-with-privacy-when-it-comes-to-location/.

⁹ Future of Privacy Forum, *FPF Finds Nearly Three-Quarters of Most Downloaded Mobile Apps Lack A Privacy Policy* (May 26, 2011), <http://www.applicationprivacy.org/?p=723>.

¹⁰ Common Sense Media, *Protecting Our Kids’ Privacy in a Digital World*, 3 (Dec. 2010), http://cdn2-www.ec.commonsensemedia.org/sites/default/files/privacy_whitepaper_dec2010.pdf.

It is obvious to most of us and clearly to most parents that existing protections for online privacy are inadequate and not keeping pace with the rapid changes of our mobile electronic world.

b. No Behavioral Profiling of Children.

The Commission should also be praised for its straightforward application of COPPA to IP addresses and identifiers when used for “amassing data on a child’s online activities or behaviorally targeting advertising to the child.”¹¹ Common Sense Media has consistently called for limits on behavioral profiling of kids, and the COPPA update makes clear that behavioral profiling of children should take place only with parental consent.

Children and teens should not have their online behavior tracked or any other personal information about them collected, profiled, or transferred to other parties. Without parents or kids knowing it, companies collect, store, and sell information about what kids do online and on mobile phones. Companies can install “cookies,” “supercookies,” or other devices that track which websites kids visit, including which pages they look at; what searches they make; which videos they download; who they friend on social networks; what they write in emails, comments, or instant messages; and more. The Commission’s proposed rule change is correct, and necessary – behavioral profiling of children is wrong, especially without parental consent.

III. Legislation Is Needed to Enable Adolescents to Protect Themselves

While the proposed updates from the Federal Trade Commission will be an important step for younger kids, adolescents still need protection, and legislation has been introduced that would provide a strong baseline. This legislation also addresses an important gap in industry self-regulatory efforts.

¹¹ COPPA NPRM at 59,812.

H.R. 1895, “The Do Not Track Kids Act” foresaw many of the changes that FTC proposed in its COPPA NPRM, but also provides important new protections for adolescents. Teens would receive protections from behavioral marketing.¹² Further, operators of teen websites would have to provide a Digital Marketing Bill of Rights for Teens.¹³ These rights would be modeled on principles of Fair Information Practices. Teens’ geolocation information is protected, and they are included under the proposal for an “eraser button.”¹⁴ Contrary to the misleading description by some critics,¹⁵ these protections would empower teens without imposing the COPPA model of verified parental consent on teens.

H.R. 1895 also picks up where current industry self-regulatory efforts fail – at protecting youth. The current Self-Regulatory Program for Online Behavioral Advertising offers no protections for adolescents, and offers children under 13 the mere promise that participants will follow COPPA.¹⁶ The principles treat children’s data (but not teens’) as “sensitive data” and then promise:

Entities should not collect “personal information,” as defined in the Children’s Online Privacy Protection Act (“COPPA”), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA.¹⁷

¹² Do Not Track Kids Act of 2011, H.R. 1895, 112 Cong. §4.

¹³ *Id.* at §5.

¹⁴ *Id.* at §6, § 7.

¹⁵ Stephen Balkam, *Not Backing Kids Tracking Bill*, Huffington Post, Jul 18, 2011, http://www.huffingtonpost.com/stephen-balkam/kids-tracking-online_b_901974.html.

¹⁶ See <http://www.aboutads.info/>.

¹⁷ *Self Regulatory Principles for Online Behavioral Advertising*, 16, 17. (July 2009), <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>

The caveats and conditions mean that, without the COPPA update to include behavioral profiling information, much behavioral profiling can still occur so long as it is “compliant with the COPPA.”

Media and technology companies can and should play a crucial role in helping families manage the role of media in children’s lives, and in helping prepare teens to use media and technology in smart, responsible ways. This is especially true when it comes to protecting privacy and personal information, because these companies are in the best position to develop better technology, tools and information for users. There have been some valuable steps by industry leaders recently, such as the Do Not Track browser tools developed by Mozilla, Apple and Microsoft (although it remains to be seen whether advertising networks and data brokers will respect Do Not Track signals sent by users.) However, on the whole, efforts by media and technology companies to provide better solutions have been few, and disappointing.

At the very least, users should get better disclosure from online services and operators about their privacy policies and practices. In the Common Sense/Zogby survey, 91% of parents (and 81% of teens) said they would take more time to read terms and conditions for websites if they were shorter and written in clear language.¹⁸ Companies may feel they must have lengthy, legal privacy policies and terms of services, but these are clearly not the best way to truly inform users – parents or teens – about data a site will collect, and how that data may be used.

At the recent F8 Developers Conference, Facebook CEO Mark Zuckerberg said “[i]n the world we’re building, where the world becomes more transparent, it becomes more important for people to be good to each other.”¹⁹ This is a cynical statement where children’s

¹⁸ Common Sense Media, *Protecting Our Kids’ Privacy in a Digital World*, 4 (Dec. 2010), http://cdn2-www.ec.common sense media.org/sites/default/files/privacy_whitepaper_dec2010.pdf.

¹⁹ *Facebook Offers New Vision at F8*, Politico Morning Tech, Sept. 23, 2011, <http://www.politico.com/morningtech/0911/morningtech312.html>.

lives are concerned. Common Sense strongly agrees about the value of transparency in terms of privacy policies and practices, and requiring companies to provide full disclosure about their privacy policies and practices would be a great place to start.

IV. Conclusion

Like our society as a whole, Common Sense Media admires and embraces the innovations that media and technology companies have developed in recent years, and we want children and families to be able to access all the benefits of these innovations. However, we also recognize some of the potential downsides of these technologies – especially for children.

All of us – parents and families, schools, companies, and policymakers – play a role in helping children benefit from these media and technology innovations, while also ensuring that they are protected from potential downsides.

Parents and families obviously play the first and most important role in protecting children’s privacy, but media and technology companies can do a lot more to help them, by providing better solutions, clearer information and better tools.

Schools can and should do more to prepare children and teens with “rules of the road” for the digital world – but many schools and educators are not yet prepared to teach Digital Literacy and Citizenship, and to provide guidance about new technology in our lives. Former FCC Commissioner Deborah Taylor Tate, a member of the Common Sense Media Board of Directors, recently described the challenge:

...parents and schools are also struggling with social networking and its impact on education. Educators are being called on to be everything from online referees to cybersecurity experts. Most teachers are now teaching a subject that was not even part

of their college training, across mediums that had not even been invented, to prepare our children for competing in a global job market.²⁰

Media and technology companies are especially important, because they are well positioned to bring real solutions – tools that are easy to find and use, and information that enables parents and teens to make smart choices.

Policymakers play a crucial role as well, as demonstrated by the recent leadership of the Federal Trade Commission regarding the COPPA rules. This Congress should demonstrate similar leadership, by urging media and technology companies to innovate to protect online privacy, and by building sensible legislation that will empower parents and teens, protect children, and preserve privacy in a thriving electronic economy.

Thank you again for this important hearing, and for the opportunity to speak with you today.

²⁰ *Schools Enter Digital Conversation*, Nashville Tennessean, Sept. 21, 2011, <http://www.tennessean.com/article/20110922/OPINION03/309220019/Schools-enter-digital-conversation?odyssey=mod|newswell|text|Opinion|p>